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RINI & CORAN, P.C.

Attorneys at Law

Dupont Circle Building
1350 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036

(202) 296-2007
Fax (202) 429-0551

ROBERT J. RINI
STEPHEN E. CORAN*
STEVEN A. LANCELLOTTA
EVAN D. CARB
VIVIAN E. KELLER*

*NOT ADMITTED IN D.C.

February 9, 1994

VIA HAND DELIVERY

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation
Ref: MM Docket No. 92-265
MM Docket No. 92-266

Dear Mr. Caton:

On February 2, 1994, Norman Mills of Colstrip Cable TV Company, Dean Peterson and Sherry Peterson of Southwest Missouri Cable TV, Conrad Bye of Bye Cable, Inc., and John Johnson of Country Cablevision, Ltd., met with Commissioner Quello and his legal assistant Maureen O'Connell. The attached summary describes the points presented during this meeting.

These individuals spoke with Lauren Belvin in a separate meeting on February 2, 1994 to discuss these same points.

Enclosed are three copies of this notice and attached summary. Please direct any inquiry concerning this matter to the undersigned.

Respectfully submitted,

Robert J. Rini

cc: Commissioner Quello
Maureen O'Connell
Lauren Belvin

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COMPETITION IN TELECOMMUNICATIONS, THE SUPER HIGHWAY, in the non-urban areas of the United States will depend on the survival and viability of the small cable TV operators. If they, with their existing delivery systems are unable to compete effectively with the telephone companies, there will be no one who can. The local non-urban delivery systems exist but "on and off ramps" must yet be constructed.

The ability of the small cable operators to compete and supply the "on and off ramps" and the digital conversions that will be necessary depend upon the achievement of political stability for their industry.

The principle that must guide the telecommunications industry into the competitive arena is the provision of a level playing field. A level playing field must be achieved from regulatory positions (state and federal) and from the position of financial sources.

SPECIFIC ELEMENTS OF A LEVEL PLAYING FIELD:

I. FRANCHISE

A. Most cable operators presently secure franchises with a limited life, typically 15 years. There is no assurance that a renewal franchise will be issued to the same operator. At best the operator must compete, at considerable expense, with other would-be operators who, if successful, would then be able to purchase the existing plant at "fire sale" prices.

B. Most telephone companies have permanent franchises.

C. Cable franchises commonly require the payment of a "franchise fee" typically in the area of 5% of the cable company's gross revenue.

D. Franchise fees are not generally required of the telephone companies. They often claim they pay in other ways but such claims ring false.

E. It is true that telephone companies often pay a fee for being allowed to place poles on city property including alleys, sidewalks, and streets.

Cable companies also pay a fee for being allowed to place poles on city property including alleys, sidewalks, and streets, (in addition to the franchise fee.)

F. Franchises obtained by cable operators have a direct bearing on the operators's ability to secure financing. The direct negative bearing becomes effective at about mid-point in the life of the franchise. At this time bankers and financiers begin to question the operator's ability to liquidate the new loan within the franchise life. Such concerns multiply as the remaining franchise life becomes shorter. This reduces the cable operator's ability to provide the system and service improvements that will be required to remain competitive.

G. The telephone companies rarely face this problem, if ever.

H. UNIFORMITY OF COMPETITIVE FRANCHISE TERMS must be available to all entrants into the information super-highway system to equalize and foster competition.

2. FINANCING

A. The telephone companies generally enjoy PERPETUAL financing. They raise required funds by issuing stock. Never do they have to pay back the principal of the stock sold. The only pay dividends on the stock and pay that only if they make a profit. Smaller telephone companies have access to low interest long term (35 years) loans from the federal government (REA.)

B. The cable companies serving the non-urban areas are by their very size and geographic locations (limited growth areas) unable to float stock issues. They are by REA rules or federal law, denied access to low interest long-term REA loans.

C. When a non-urban cable operator sits down with his banker, a repayment schedule is worked out requiring repayment on a regular basis of both the interest and the principal. His capability is limited by his assured ability to return to the bank both interest and principal on a relatively short term basis.

D. Access to long term low interest funds should be available to cable operators either through REA funding or other governmental entity to enable them to compete with the telephone companies on an equal basis.

E. In the absence of making REA funds available, a federally administered loan program should be derived from assessments levied on telephone companies or any other entrants who utilize perpetual financing. This assessment would partially offset the advantage of perpetual finances enjoyed by the telephone companies and other entities.

F. The availability of financing on an equitable basis will materially improve the opportunity to achieve and maintain effective competition in the non-urban areas.

III. SWITCHES

A. In the non-urban areas, access to existing suitable telecommunication switches must be available to all operators of distribution systems at a fair and reasonable cost. It would be impossible for the limited subscriber base in non-urban areas to support two or more local switches. Suitable switches are those capable of handling the traffic in volume and character, to access the super highway and still provide plain old telephone service.

B. True competition to effectively constrain rates depends on measures that keep cost in check.

IV. Program Access Cost

A. As the combined telephone companies enter the provision of video service, they will become such a massive purchaser of programming that the purchasing power of TCI as it is now know, will be minuscule in comparison. As the programming situation now stands, TCI secures most programming at about 1/2 of the price paid for the same services by the non-urban operators. The situation is unfair presently but will become immeasurably worse.

B. Price controls on the programmers or other similarly effective measures must be required by law or by regulation if effective competition is to be realized.

V. Pole Attachments

A. In most cases power companies and telephone companies have reached no low cost agreements for the joint use of poles. This is not the case of either of them when addressing the joint use of their poles by cable companies. Currently, charges to cable companies range from $3.50 per pole per year to $20.00 per pole per year. Some agreements imposed upon cable companies prohibited any use other than video entertainment of the TV cable on their poles. At a charge of $1.00 per pole per month, the cable company has bought for the telephone company or the power company a new pole about every 8 to 10 years even when a new pole is not needed or installed.

B. In order to provide meaningful competition, joint pole agreements must give equal treatment to all competing parties. This must be required by law.

VI. Public Services

A. Cable companies must be allowed to contribute to the communities in which they serve. This they do by extending services, including fibre optic cable to schools, hospitals, and libraries at minimal or no cost to these community institutions.

B. Under the benchmark price caps cable companies are limited in earning capacity to cost plus a minimum (if any) profit. This greatly restricts their ability to help make their communities a better place in which to live and work and to bring them into the telecommunication information age.

Cable operators in the non-urban areas do not fear equal competition. In fact, they welcome the opportunity to utilize their existing and distribution systems in establishing their part of the super telecommuniations highway. Their participation will provide lesser costs to their communities as they meet telephone and other competition head to head in the area of universal public service across the broad spectrum of the dawning infromation age.